



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electro-Voice, Inc.--Reconsideration

File: B-243463.2

Date: May 17, 1991

Larry King for the protester.

Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest is denied where new argument presented by protester is untimely raised.

DECISION

Electro-Voice, Inc. (E-V) requests reconsideration of our decision, Electro-Voice, Inc., B-243463, Apr. 3, 1991, 91-1 CPD ¶ ___, in which we dismissed its protest of the rejection of its proposal as technically unacceptable, and award of a contract to Bose, Inc. under request for proposals (RFP) No. F33657-90-R-0078, issued by the Department of the Air Force for an Active Noise Reduction (ANR) Headset.

We deny the request.

In its protest, filed on March 29, 1991, E-V stated that it had offered in its proposal to provide an M169 model microphone as part of the headset instead of the required M100 or M101 model. The agency pointed out in discussions that the M169 model was unacceptable, but E-V nevertheless reasserted in its best and final offer (BAFO) its intent to provide the M169 model. Accordingly, the agency rejected E-V's proposal as technically unacceptable. E-V asserted in its protest that it now would agree to furnish the required M100 microphone at the same price it offered for the M169, which is lower than Bose's price. As E-V admittedly did not offer the required microphone model, we dismissed the protest on the basis that a proposal that fails to conform to a material solicitation requirement is unacceptable and may not form the basis for award.

E-V's request for reconsideration alleges that our decision was based on an error of fact as, contrary to the discussion

in our decision, the M100 microphone in fact was not required by the solicitation.


We point out that E-V's protest, which was not accompanied by a copy of the RFP or any portion thereof, referred to the "specific solicitation requirements which were the M100 microphones desired." This statement clearly indicated that the M100 microphone was required by the RFP. E-V still has not provided us with a copy of the RFP but, even if E-V is correct that the M100 microphone was not specified, we have no basis to reconsider the matter.

E-V argues that, since no microphone was in fact required to be furnished with the headset, the Air Force improperly rejected its proposal "for throwing in a microphone free of charge." However, that is not the reason E-V's proposal was rejected. In a March 13 award notification letter, received by E-V on March 19, the contracting officer explained to E-V that:

"the government's basic requirements included the requirement that the selected ANR system be designed to work with the M100 and M101 microphones. Your final response at BAFO reiterated your intention to design your ANR to meet the government's testing requirements using the M169 microphone."

Thus, it is clear that E-V's proposal was rejected for its failure to establish the headset's compatibility with the M100 and M101 microphone. To the extent that E-V disagreed with the agency's determination, it had until April 2 (10 working days from March 19) to file a protest on that basis. E-V's March 29 protest, however, did not challenge the agency's conclusion. Instead, E-V at that time offered to supply the M100 at the same price it offered for the M169. E-V did not challenge the basis for rejection of its headset until it filed its request for reconsideration on April 22; we will not reconsider our decision on the basis of an argument untimely raised. See East West Research, Inc.--Recon., B-236047.3; B-236048.3, Dec. 6, 1989, 89-2 CPD ¶ 518.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel